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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.No.212 of 2016

1. M/s.Arul Constructions,
whose exact construction is not known to the plaintiff
and is represented by de-jure facto person
A.Bright Vinohar, S/o.Arun Mani
"Embassy Towers", No.1, 2nd Floor,
No.55, Montieth Road, Egmore, Chennai - 600 008.
 2. A.Bright Vinohar
 3. Deepika Vinohar
- ...Appellants/Defendants

Vs.

Arul Villa Flats Welfare Association,
Rep. by its President & Secretary,
R.Krishnan & K.Sriramulu
No.336/4, Main Road, Kamaraj Nagar,
Avadi, Chennai - 600 071.

...Respondent/Plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the Judgment and Decree dated 15.09.2014 in A.S.No.65 of
2013 on the file of the Court of the Subordinate Judge,
Poonamallee, reversing the judgment and decree dated 24.06.2013
made in O.S.No.105 of 2009 on the file of the Principal District
Munsif, Poonamallee.

For Appellants : Mr.T.Dhanasekaran

For Respondent : Ms.V.Srimathi for
Mr.V.Raghavachari

JUDGMENT

The defendants are the appellants in the Second Appeal.

2.The respondent/plaintiff which is a Flat Association filed
the suit against the defendants who are the promoters, seeking
for the relief of permanent injunction restraining the
defendants from in any manner disturbing with the peaceful
possession and enjoyment of the suit property and from dealing
with the suit property.



3.The case of the plaintiff Association is that the Association members had purchased undivided shares of land from the 2nd defendant and they had independently approached the promoters for purchase of flats. The grievance of the plaintiff was that the defendants attempted to take possession of the 2nd floor and sell the same to third parties when they had already sold the entire undivided shares and the flats were also handed over and the plaintiff Association had taken control of the common area. Hence, the plaintiff Association sought for the relief of permanent injunction.

4.The defendants filed the written statement and took a stand that the members of the plaintiff Association had entered into Sale agreements and Builders agreements with respect to their respective flats with the 2nd defendant. Their respective shares were also sold and the flats were also handed over. A specific defence taken by the defendants is that 796 Sq.Ft. of undivided share still continues with the defendants and it pertains to the flat that is available in the second floor. Therefore, the defendants took a stand that the plaintiff Association does not have the right to seek for the relief of permanent injunction as against the co-owner of the property. Accordingly, the defendants sought for the dismissal of the suit.

5.The trial Court on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, was pleased to dismiss the suit in entirety through Judgment and Decree dated 24.06.2013. Aggrieved by the same, the plaintiff Association filed an appeal before the Sub Court, Poonamalle in A.S.No.65 of 2013. The lower Appellate Court on re-appreciation of the oral and documentary evidence and after considering the findings of the trial Court, came to a categorical finding that PW1 had admitted in his evidence that the defendants have retained 752 Sq.ft. of undivided share in the property. However, PW1 had also stated that the defendants had put up a construction in excess of the undivided share and there was a deviation from the original plan. The lower Appellate Court found that the defendants had not taken any steps to regularize the deviation and the lower Appellate Court therefore thought it fit to partly allow the appeal by granting permanent injunction restraining the defendants from alienating or encumbering the suit property till they get the regularization from the concerned authority. Aggrieved by the same, the defendants have filed this Second Appeal.

6.Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the respondent.

7.This Court also carefully perused the materials available on record and the findings of both the Courts below.



8. In the considered view of this Court, both the Courts below on appreciation of the oral and documentary evidence, came to a categorical conclusion that the defendants have retained 752 Sq.ft of undivided share in the suit property. However, while putting up the construction, the defendants had deviated from the original plan and put up the construction and the only defence taken by the defendants was that they had already applied for regularization and it is pending. The lower Appellate Court while dealing with the stand taken by the defendants, gave a finding that the defendants have not proved the regularization of the deviation even after six years and no documents were filed to show that even an application has been made before the CMDA for regularization. Hence, the lower Appellate Court confined the relief of permanent injunction by restraining the defendants from alienating or encumbering the suit property till they get proper regularization from CMDA. This finding rendered by the lower Appellate Court is supported by reasons and this Court does not find any perversity in those findings. In any event, no substantial question of law is involved in the Second Appeal.

9. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Subordinate Judge, Poonamallee.

2. The Principal District Munsif, Poonamallee.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.24852

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.24395

S.A.No.212 of 2016

GPL(CO)

RGA(18/05/2022)